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Lawsuit focuses on herbicide drift issue**Western Oregon residents seek an end to exemptions contained in state statutes**

BY SUSAN PALMER*The Register-Guard*Published: **Wednesday, Jun 15, 2011 05:01AM**

A handful of Oregon residents have filed a lawsuit against the state over rules they say protect forest and farm landowners at the expense of the legal rights of their neighbors.

Herbicide drift is at the heart of the dispute.

The seven people filing the suit this week live in Western Oregon, three in the Blachly area, two near Sublimity a little east of Salem and two near Walton east of Mapleton on Highway 126.

Their complaint alleges that laws passed by the state Legislature in 1993 give them no legal recourse in the courts from the periodic episodes of herbicide drift from neighboring landowners.

Gary Hale and Jan Wroncy of Blachly say the problem with herbicide drift goes back decades. They've lived and farmed organically on 7 acres since purchasing the land in 1987. Their son, Forest Wroncy-Hale, is the third plaintiff from Blachly.

Their property is surrounded by privately owned forested slopes frequently treated with herbicides in an effort to knock down weeds so that tree saplings can quickly grow, according to the lawsuit.

Hale said that there are times of year when the irrigation water they take from Lake Creek actually inhibits the growth of their plants because it contains herbicides that have drifted into the creek from where the products have been applied.

"The plant growth just slows tremendously," Hale said.

All seven landowners allege that herbicides from forest and farm operations regularly drift onto their property causing a range of problems from human illness to damage to the plants and trees they grow and the death of wildlife.

The complaint, filed in Lane County Circuit Court by Eugene attorney David Force, alleges that the state statutes collectively known as the "Right to Farm and Right to

Forest Act" give owners of large timber and agricultural parcels immunity from lawsuits for trespass or nuisance, two types of civil claims that have been recognized by both British and American courts for centuries.

"These cases go back to the 1600s in England," Force said. "They're recognized everywhere, including in Oregon."

The complaint said that the Oregon Constitution, which went into effect in 1859, gives people the right to sue when they or their property have been "injured," and prohibits the state from enacting laws that deprive people of that legal option.

The more recent statutes say that because farming and forestry are critical to the state's economic welfare, farmers and foresters can't be sued in trespass or nuisance cases unless their practices result in damage to a commercial crop, or in someone's death or serious injury.

The state Attorney General's office declined comment on the suit. The office generally doesn't comment on litigation until it submits court filings, spokesman Tony Green said.

The suit doesn't specifically target any of the plaintiffs' neighbors, Force said.

"My clients are not seeking to control the activities of the commercial timberland or agricultural operators on their own property," Force said. "They only seek to restore the historic rights of property owners to protect their own property from invasions by others."

Plaintiffs David Eisler and Sarah Sheffield, who live in Walton, have about 80 acres of forestland acquired beginning in 1979. They grow and harvest trees using sustainable practices that do not include chemicals, according to the suit. The couple have been working for the past 30 years to help restore historic salmon habitat in the streams on their property and are also working to help restore northern spotted owl habitat on their land.

Herbicide drift threatens the health of the plaintiffs and the two families who rent homes on their property, the lawsuit alleges.

Sublimity residents Carolyn Ashlock and Warren Trotter own 36 acres of wetland prairie that they manage for wildlife and native plants, according to the suit. That land figures into the state's plans for long-term wildlife habitat conservation, but Ashlock and Warren, whose land is at a lower elevation than the surrounding farms and forests, frequently smell pesticides and observe dying plants and dead animals on their land, the lawsuit alleges.

Hale and Wroncy, who live in the Blachly area, are well known as residents concerned with herbicide drift and have successfully lobbied both Lane County and the state highway department to reduce their pesticide use along area roadways, Hale said.

Working with private landowners has been more challenging, in part because of the state protections, he said.

The couple previously filed suit against a neighbor alleging trespass from drifting herbicides, but then voluntarily withdrew it because of the state statute. Even though the case didn't go to trial, the couple still found themselves liable for the court costs of the defendants, thanks to another provision in the statute, Hale said.

"It's just a nightmare," Hale said. "It should be removed from state law."

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